

Calendar No. 1841

86TH CONGRESS }
2d Session }

SENATE }

REPORT
No. 1770

CORRECTION OF RESERVATION IN DEED—HEIRS OF J. B. WHITE

JUNE 29, 1960.—Ordered to be printed

Mr. COOPER, from the Committee on Agriculture and Forestry,
submitted the following

REPORT

[To accompany S. 882]

The Committee on Agriculture and Forestry, to whom was referred the bill (S. 882) for the relief of the heirs of J. B. White, having considered the same, report thereon with a recommendation that it do pass without amendment.

This bill would correct a mistake of fact in a deed executed to the United States on August 6, 1936. The deed contained a 25-year reservation of all minerals on behalf of the heirs of J. B. White when it should have contained a perpetual reservation. The bill directs the Secretary of Agriculture to quitclaim all oil, gas, and other mineral rights in the land to the heirs. Hearings were held on S. 882 by a subcommittee last year.

Under date of May 23, 1933, the Government offered to purchase the land concerned for \$1.65 an acre, subject to a perpetual reservation of oil and gas.

On November 4, 1933, a 6 months' option on the land was executed by the attorney in fact for the heirs for \$1.65 an acre, subject to a 25-year reservation of all minerals.

On August 6, 1936, the attorney in fact executed a deed to the land, subject to a 25-year reservation of all minerals.

The attorney in fact and the heirs state that they understood that the option and deed conformed to the offer and provided for a perpetual reservation, that there was never any mention in any negotiations of a 25-year reservation, in lieu of a perpetual reservation, and that they would not have conveyed the property if they had known that the conveyance contained only a 25-year reservation. The records of the Department of Agriculture do not disclose any reason for the variance between the offer and the option and deed.

Last year the committee reported Senate Resolution 131, Calendar No. 361, an original resolution to refer this bill to the Court of Claims. Since that time the attorney for the heirs has furnished some additional information to the committee, and it appears that due to the lapse of time since the offer of May 23, 1933, there is no likelihood that any evidence could be produced in the Court of Claims which has not already been furnished to the committee. It appears, therefore, that no useful purpose would be accomplished by referring this bill to the Court of Claims, and that if justice is to be done, the bill should be passed.

The conveyance provided by the bill should be made subject to the rules and regulations as to the exercise of the rights conveyed as set forth with respect to the reservation in the deed to the United States.

DEPARTMENTAL VIEWS

DEPARTMENT OF AGRICULTURE,
Washington, D.C., March 4, 1959.

Hon. ALLEN J. ELLENDER,
*Chairman, Committee on Agriculture and Forestry,
U.S. Senate.*

DEAR SENATOR ELLENDER: This is in reply to your request of February 4, 1959, for a report on S. 882, a bill for the relief of the heirs of J. B. White.

We recommend that this bill not be enacted.

This bill would authorize and direct the Secretary of Agriculture to convey by quitclaim deed, without consideration, to the heirs of J. B. White, all oil, gas and other mineral rights held by the United States in approximately 589 acres of land in Powell and Wolfe Counties, Ky., on the basis that such rights were erroneously conveyed to the United States.

Under date of May 23, 1933, the assistant regional forester of the eastern region of the Forest Service, sent a form letter to Mr. Roy E. Davis, administrator of the estate of J. B. White, advising that funds were available for the purchase of lands in the Cumberland purchase unit and offering to purchase 629 acres, more or less, of estate lands at \$1.65 per acre, subject to an outstanding oil and gas lease and a perpetual reservation of oil and gas. The area of the land in question was later determined to be 589 acres.

On November 4, 1933, the J. B. White heirs, through Roy E. Davis, as agent and attorney in fact, optioned this tract to the United States. The option provided that conveyance would be subject to: "Oil and gas rights outstanding in Amp Burnett of Torrent, Ky. Also subject to 25 years' reservation of all minerals."

Purchase of this tract in accordance with the terms of the option was approved by the National Forest Reservation Commission on January 11, 1934.

On August 3, 1936, a draft of deed to the United States was sent to Mr. Davis by the Department of Agriculture attorney handling the case. The deed was executed August 6, 1936, and returned to the Department's attorney on the same day. It excepted oil and gas rights owned by third parties, if any, and reserved to the vendors for a period of 25 years from November 4, 1933, all minerals, if any, in, upon and under the conveyed lands, and provided that at the end of

the 25 years such reservation shall terminate and such minerals, oil, and gas, together with all rights thereunder, shall become the property of the United States.

While the option given to Mr. Roy Davis differed in regard to the period of the mineral reservation from the preliminary offer initially made by the Forest Service, there is nothing in our records to indicate that the provisions of the option and the terms of the deed did not represent the understanding and agreement of the parties at the time the option was given. There is no correspondence from Mr. Davis or any of the heirs as to the mineral reservation until many years after the purchase of the land was closed.

This bill, if enacted, would establish a precedent for reconveying to former owners rights and interests conveyed to the United States solely on the basis of a claim by the former owners which cannot be substantiated. Such a precedent would not be in the public interest.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

TRUE D. MORSE, *Acting Secretary.*

○

